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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 522

THE UNITED STATES DISTRICT FOR THE WESTERN DISTRICT OF OKLAHOMA AND THE HONORABLE STEPHEN S. CHANDLER, CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA, *Petitioners*,

v.

OTTO G. LUTES, FLORENCE LUTES, B. B. FRENCH, JEWELL FRENCH, L. O. HOOD, MYRTLE HOOD, D. M. BROWER, MILDRED BROWER, CARL R. STALCUP, MILLIE L. STALCUP, IDA F. WRAY, E. F. BRUCE, GERALDINE BRUCE, J. J. FRENCH, THESIA FRENCH, RIFFE WESLEY, HAZEL RIFFE, OSTBY S. AUSTIN, ETHEL AUSTIN, JESSIE E. BROWN, D. L. HAMILTON, HELEN HAMILTON, HARRY G. RIFFE, MYRTLE RIFFE, G. F. PRICE, FLORA LEE PRICE, LEWIS B. CARPENTER, MARY E. CARPENTER, E. L. CARPENTER AND BLANCHE M. CARPENTER, *Respondents*

PETITION FOR REHEARING

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PETITION FOR REHEARING

Denial of certiorari in this case will cause unfortunate consequences which may not be readily perceptible from the papers heretofore filed. The exigencies of the case have also been sharpened somewhat by a

development occurring since the petition was denied. For these reasons Petitioner respectfully offers this petition for rehearing.

Under the mandate of the 10th Circuit the Federal District Court for the Western District of Oklahoma must now proceed to judgment with a diversity dispute turning on the construction of an unusual oil and gas leasehold instrument. The 10th Circuit, in a decision involving Kansas land, has adopted an interpretation of such instruments which, if followed in the instant case, would require judgment against the lessees. Oklahoma's substantive law, which under the *Erie-Guaranty* doctrine must control the instant litigation, has not yet developed an interpretation of such instruments. In the lone decision on point, the Oklahoma district court for Texas County, a court of original jurisdiction, has taken a position precisely opposite to that of the earlier 10th Circuit decision, a view which, if applied in the instant case, would require judgment for lessees. The decision of this state court is now docketed for review by the Oklahoma Supreme Court.

The decision by the Oklahoma Supreme Court in this case will express the state rule which must be followed by the Federal District Court in the instant case. Since the petition for certiorari in the instant case was denied by this Court, a brief has been filed in the Oklahoma Supreme Court by the lessors. The lessees' brief will be filed before the end of January. The Oklahoma Supreme Court's decision may be expected within a reasonably short time.

Unless it is altered, the 10th Circuit's mandate will now force the Federal District Court into an immedi-

ate adjudication of the case below, without the benefit of the Oklahoma Supreme Court's definitive pronouncement of the substantive law that must be followed by the Federal court. If so, there is an obvious possibility that the rule the latter chooses to christen as "Oklahoma" law will differ from the rule later enunciated by the Oklahoma Supreme Court. If this possibility materializes the upshot will be a reversal on appeal by the same 10th Circuit whose mandate now compels immediate adjudication. To hazard such a risk, with its attendant expense to litigants, seems an altogether unreasonable and unnecessary allocation of judicial energies. Why it *must* be hazarded, when the entire awkward problem could be avoided simply by awaiting the state court decision, is not easy to fathom. The state court decision will be dispositive, and it will be forthcoming fairly soon. Were it otherwise Petitioner's case would stand quite differently. As it is, both Court and litigants will be seriously disadvantaged by the ill-advised requirement of an immediate adjudication when the law to be applied has not yet been announced but is expected shortly from the authoritative state tribunal.

CONCLUSION

For these reasons, Petitioner respectfully prays that this petition for rehearing be granted and the mandate of the 10th Circuit be stayed.

Respectfully submitted,

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